

FILED

FEB 03 2012

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

LLOYD SCOTT MAIER,)	CV 11-84-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN MIKE MAHONEY;)	
ATTORNEY GENERAL OF)	
THE STATE OF MONTANA,)	
)	
Respondents.)	
_____)	

Petitioner Lloyd Scott Maier filed this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the Board of Pardons and Parole's decision denying him clemency. Respondents ("the State") moved to dismiss the petition on October 26, 2011, for failure to exhaust. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on January 5,

2012 and recommended granting the State's motion to dismiss and dismissing Maier's petition for failure to exhaust state remedies. Petitioner did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch found that merely alleging various federal constitutional violations in the same document with the facts underlying the federal claim is not enough; a state prisoner must "fairly present" to the Montana Supreme Court his claim that a specific set of facts violates a specific federal right. After a review of Judge Lynch's Findings and Recommendation, I find no clear error. Accordingly,

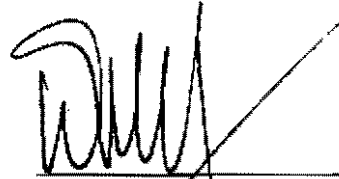
IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #27) are adopted in full. Respondents' Motion to Dismiss (dkt #16) is GRANTED. Maier's Petition (dkt #1) is DISMISSED WITHOUT PREJUDICE for failure to exhaust state remedies.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

The Clerk of Court is directed to enter, by separate document, a judgment of

dismissal without prejudice.

Dated this 3rd day of February, 2012.

A handwritten signature in black ink, appearing to read 'DMolloy', written over a horizontal line.

Donald W. Molloy, District Judge
United States District Court

A large, stylized handwritten flourish or signature in black ink, consisting of a large loop and a trailing line.